Patent

Attorney's Docket No. 001560-393

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	)	
	)	
Tatsuo KAKIMOTO	)	Group Art Unit: 1638
	)	
Application No.: 09/787,737	)	Examiner: Stuart F. Baum
	)	
Filed: March 22, 2001	)	Confirmation No.: 6551
	)	
For: HOMEOBOX GENE ENCODING A PROTEIN INVOLVED IN DIFFERENTIATION	)	

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In complete response to the Requirement for Restriction issued by the Patent and Trademark Office on June 21, 2002, applicants hereby elect with traverse the invention of Group I, claims 1-3, 7-10, 12-22 and 24-27 for prosecution in this application. Group I is directed a gene of SEQ ID NO:1 encoding a protein of SEQ ID NO:2, a vector comprising said sequence, a host cell and method for inducing differentiation, shoot formation, and branching in a plant.

The traversal is based upon the fact that the instant application was filed under §371. Applicants are thus entitled to a "unity of invention standard" for determining restriction. It is respectfully submitted that "unity of invention" exists in the instant case. Group I relates to a gene of SEQ ID NO:1 encoding a protein of SEQ ID NO:2, a vector comprising said sequence, a host cell and method for inducing differentiation, shoot formation, and branching in a plant. Group II is directed to a gene of SEQ ID NO:3 encoding a protein of SEQ ID NO:4. Group III is drawn to a protein.

The homology between SEQ ID NO: 2 and SEQ ID NO: 4 is about 39%. On the other hand, the homology between SEQ ID NO: 2 of the present invention and the sequence of the cited Janssen et al reference is only 10%. Similarly, the homology

between SEQ ID NO: 4 of the present invention and the sequence of the cited Janssen et al reference is also only 10%. Therefore, contrary to the assertion in the Official Action, we believe that the SEQ ID Nos: 2 and 4 have a common feature in comparison to the Janssen sequence. Unity of invention thus exists.

Moreover, according to the MPEP § 803, a restriction between patentably distinct inventions is proper only where there is a serious burden on the Examiner to examine all the claims in a single application. This is true even when appropriate reasons exist for a restriction requirement.

In the present application, it is believed that because there is a close relationship between the subject matter of the three sets of claims, there would be no serious burden on the Examiner to examine all the claims at this time.

In view of the above, it is respectfully requested that the restriction requirement be withdrawn or at the very least altered.

In the event that there are any questions relating to this amendment or the application in general, it would be appreciated if the Examiner would contact the undersigned attorney at (508) 339-3684.

Early and favorable action in the form of a notice of allowance is respectfully requested.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By: _____ #51,147
Donna M. Meuth
Registration No. 36,607

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620
Date: August 20, 2002